S.B. Civil Writ Petition No.5325/2004
(LRs. of Ganeshi Devi V/s Pratap Singh)

Date of Order : 3/12/2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Kailash Trivedi, for the petitioner/s

Heard learned counsel for the petitioner.

The petitioner is aggrieved against the two orders passed, first by the trial court on 11.12.1998 by which the trial court dismissed the injunction application of the petitioner and second is the order of the appellate court dated 22.7.2004, by which the appeal of the petitioner was dismissed.

It appears from the facts of the case that the two courts below after going through the facts of the case and after considering all the documents, held that there is no prima facie case in favour of the plaintiff and the plaintiff is not going to suffer any irreparable injury in case the injunction is not granted to the petitioner. Both the courts below found that the balance of convenience is also not in favour of the plaintiff.

Grievance of the petitioner is that the trial court while deciding the question of prima facie case observed that the patta produced by the plaintiff is not of the land in question and therefore, it will

prejudice the case of the plaintiff-petitioner as no finding can be recorded while deciding the application for grant of temporary injunction under Order 39 Rule 1 and 2 CPC. The apprehension of the learned counsel for the petitioner appears to be wholly unjustified in view of catena of decisions settled position of law that any finding recorded in the interim order passed an application under Order 39 Rule 1 and 2 CPC particularly relating to the facts, are not binding even on the Court which passed the order and finding, if reached by the higher court in the proceeding taken in pursuance of the order, are also not binding while deciding the suit on merit.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA)J.

Rm/